Congress of the United States
Washington, DC 20515

June 24, 2016

The Honorable Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Dear Mr. Chairman:

We are writing to express our serious objections to the Commission's proposed regulations for "navigation devices" under Section 629.

Today's video market is one of the most competitive and innovative sectors of the creative economy. In addition to pay television services, consumers can subscribe to web-based streaming services or to individual programmers' streaming services and build their own package. Consumers can receive pay TV and online services through apps on the tablets, smart phones, smart TVs, gaming consoles, PCs, streaming boxes and other connected devices they already own. All of these video services license and pay for this content, which funds creators, entrepreneurs and artists, provides jobs on and off the screen, and benefits consumers with an unprecedented explosion in creativity and video choices.

Now the FCC is proposing new rules that would remove copyright owners' rights to decide how and where to distribute their work. The proposal would require that pay TV providers extract this programming from their services so that third party device manufacturers and third-party apps developers – including foreign manufacturers and app developers – may incorporate it into their own commercial services without any agreement from or compensation to the content owners or their distributors. Programmers have warned that this approach will violate their rights as creators and content owners, "dry up the revenue needed to underwrite great shows," and jeopardize the rich variety of programming that consumers have available today. The Commission's proposal reflects a shocking indifference to the rights of copyright owners and to the limits that Congress placed on FCC authority. Section 629 is aimed at enabling retail devices to access the services offered by MVPDs as they can today with apps – not to dismantle those services or to change copyright law.

The proposed rules would also undercut important consumer protections that Congress created to protect the privacy of cable and satellite TV customers. The rules would open up private information to unregulated third-party manufacturers and app developers and create an enormous privacy gap. It asks MVPDs to police for violations but removes MVPDs' technical, legal, and contractual tools for protecting privacy and provides no consumer remedies for privacy violations by these third parties.

The proposal also eliminates the technology, testing, and agreements that MVPDs use to secure all of America's highest value programming, and reduces it essentially to *trust* that third parties – including foreign entities – will protect content, respect network security, and safeguard consumers from malware. That trust is unfounded. A proposal that eliminates key security protections is an affront to Congress' requirement in Section 629 that FCC rules may not "jeopardize security" or impede the legal rights of MVPDs "to prevent theft of service."

The Commission wasted over a billion dollars of consumers' money from prior technology mandates, until Congress had to step in and repeal that mandate. There is no need for more ill-founded technology mandates in a marketplace where consumers can access multichannel and online video content on a wide and growing array of retail devices.

Sincerely,

Tim Scott
United States Senator

Mark Sanford
Member of Congress

Joe Wilson
Member of Congress

Jeff Duncan
Member of Congress

Trey Gowdy
Member of Congress

Mick Mulvaney
Member of Congress

Tom Rice
Member of Congress

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Jeff Duncan
U.S. House of Representatives
106 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Duncan:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators and the privacy protections afforded to pay-TV consumers. I take your input on these issues seriously and assure you that it will receive careful consideration.

Section 629 of the Communications Act, adopted by Congress in 1996, requires the Commission to promote competition in the market for devices that consumers use to access their pay-television content. Yet, unfortunately, the statutory mandate in section 629 is not yet fulfilled. The lack of competition in this market has meant few choices and high prices for consumers. In a recent Rasmussen Report Study, 84 percent of consumers felt their cable bill was too high. One of the main contributing factors to these high prices is the no-option, add-on fee for set-top box rental that is included on every bill, forcing consumers to spend, on average, $231 in rental fees annually. Even worse, a recent congressional investigation found that the price of most equipment fees is determined by what the market will bear, and not the actual cost of the equipment.[1] With the lack of competition in this market, it should come as little surprise that fees for set-top boxes continue to rise.[2] Clearly, consumers deserve better.

This February the Commission put out for public comment a proposal that would fulfill the statutory requirement of competitive choice for consumers. This action opened a fact-finding dialog to build a record upon which to base any final decisions. Our record already contains more than 280,000 filings, the overwhelming majority of which come from individual consumers. FCC staff is actively engaged in constructive conversations with all stakeholders—content creators, minority and independent programmers, public interest and consumer groups, device manufacturers and app developers, software security developers, and pay-TV providers of all sizes—on how to ensure that consumers have the competition and choice they deserve. I am hopeful that these discussions will yield straight-forward, feasible and effective rules for all.

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I share your goal of ensuring that the marketplace of legal copyrighted works is not harmed by our proceeding. And I am confident that these FCC-specific authorities and well-practiced contractual arrangements will continue to safeguard the legitimate interests of all of the participants in the video ecosystem. We have seen this work in the cases of the statutory regime governing must carry and of the essentially contractual regime governing retransmission consent, for example.

The goal of this rulemaking is to promote competition, innovation and consumer choice. I can assure you that we do not seek to alter the rights that content owners have under the Copyright Act; nor will we encourage third parties to infringe on these rights. All of the current players in the content distribution stream, including cable and satellite companies, set-top box manufacturers, app developers, and subscribers, are required to respect the exclusive rights of copyright holders. The rulemaking will require any companies that enter this market subsequent to our action to follow the same requirements.

I also share your interest in ensuring strong anti-piracy protections. Our proceeding will protect the role of digital rights management (DRM) platforms in the television ecosystem. DRM platforms offer rigorous protection against unauthorized copying and other violations of content owner rights.[3] Importantly, DRM platforms are not developed by content owners or MVPDs, but rather, by businesses with expertise in DRM. Some of the more popular solutions currently on the market are Microsoft PlayReady and Adobe Primetime. The Notice of Proposed Rulemaking adopted by the Commission in February proposed that content owners would remain free to select the DRM platforms that they prefer. Developers of competitive apps and set-top boxes would license the DRM technology and satisfy compliance requirements – in the very same way that current set-top boxes support DRM, and the same way that competitive apps and devices and already support DRM for online video.

While the protection of artistic work and the promotion of technological innovation may be presented as conflicting values, I believe that in many situations these two important policy goals can complement each other. While many people feared that the Sony Betamax would harm the ability of content owners to earn money through films and television, it actually created

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We will continue to engage with stakeholders on this important issue. Notably, our record includes filings on this issue from the Federal Trade Commission (FTC) and a group of state attorneys general (state AGs)—representing the states of California, Illinois, New York, Connecticut, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, New Jersey, Oregon, Pennsylvania, Vermont, and the District of Columbia. In their comments, the FTC and the state AGs explain that—if we require competitive devices and apps to publicly commit to providing the same privacy protections required of pay-TV providers under the Communications Act—the FTC and the state AGs would be willing and able to enforce the privacy commitments made by third party app and device manufacturers just as they currently enforce other privacy commitments made by apps and devices. I am confident that by working with stakeholders and our federal and state partners, we will identify clear rules of the road that will afford consumers with strong privacy protections and the enforcement mechanisms necessary to ensure compliance by third parties.

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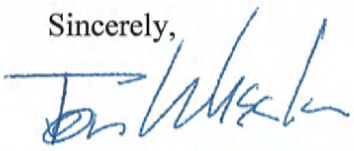

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Trey Gowdy
U.S. House of Representatives
1404 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Gowdy:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators and the privacy protections afforded to pay-TV consumers. I take your input on these issues seriously and assure you that it will receive careful consideration.

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I also share your interest in ensuring strong anti-piracy protections. Our proceeding will protect the role of digital rights management (DRM) platforms in the television ecosystem. DRM platforms offer rigorous protection against unauthorized copying and other violations of content owner rights.[3] Importantly, DRM platforms are not developed by content owners or MVPDs, but rather, by businesses with expertise in DRM. Some of the more popular solutions currently on the market are Microsoft PlayReady and Adobe Primetime. The Notice of Proposed Rulemaking adopted by the Commission in February proposed that content owners would remain free to select the DRM platforms that they prefer. Developers of competitive apps and set-top boxes would license the DRM technology and satisfy compliance requirements – in the very same way that current set-top boxes support DRM, and the same way that competitive apps and devices and already support DRM for online video.

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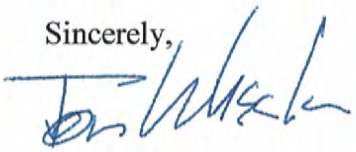

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Mick Mulvaney
U.S. House of Representatives
2419 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Mulvaney:

Thank you very much for your letter sharing your views about how the Commission's proceeding for better fostering competition in the set-top box and navigation app marketplace might impact the legal rights of copyright owners and creators and the privacy protections afforded to pay-TV consumers. I take your input on these issues seriously and assure you that it will receive careful consideration.

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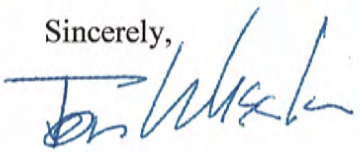

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July 11, 2016

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Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

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U.S. House of Representatives
2201 Rayburn House Office Building
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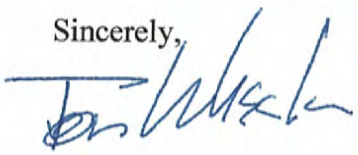

Tom Wheeler

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

OFFICE OF
THE CHAIRMAN

July 11, 2016

The Honorable Tim Scott
United States Senate
520 Hart Senate Office Building
Washington, D.C. 20510

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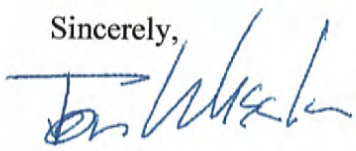

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